

Panaji, 22nd January, 2004 (Magha 2, 1925)

SERIES II No. 43

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/7/2001-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 11-12-02 in reference No. IT/93/98, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 3rd January, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/93/98

Workmen rep. by
Hotel Goan Heritage Staff Union,
Gauravaddo,
Calangute, Bardez-Goa. Workmen/Party I

v/s

M/s. Hotel Goan Heritage,
Calangute, Bardez, Goa. Employer/Party II

Workmen/Party I represented by Adv. Shri. A. Kundaikar.

Employer/Party II represented by Adv. Shri P. J. Kamat.

Panaji, dated.: 11-12-2002.

AWARD (PART-I)

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 29th September, 1998 bearing No. IRM/CON-MAP/(25)/98/10991 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Hotel Goan Heritage, Calangute, Bardez-Goa, in terminating the services of the following workmen with effect from 14-5-1998 is legal and justified?

- (1) Shri Alex Lopes, Trainee Captain.
- (2) Shri Valerian Britto, Pantryman.
- (3) Shri Sanjeev Naik, Accounts Assistant.
- (4) Shri Ireneu Gonsalves, Steward.
- (5) Smt. Rita Fernandes, Floor Supervisor.
- (6) Shri Chandu Chavan, Gardener.

If not, to what relief the above workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/93/98 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short, "Workmen") filed their statement of claim at Exb.5. The facts of the case in brief as pleaded by the workmen are that the Employer/Party II (for short, "employer") is a two starred hotel catering to the foreign guests where the workmen were employed. The workers of the employer formed an union known as "Hotel Goa Heritage Staff Union" of which the workmen were the office bearers. That after formation of the union, the employer started harassing the office bearers namely the workmen and other workers. That the employer issued charge sheet to the workmen Alex Lopes, Valeriano Britto, Irene Gonsalves and Chandu Chavan alleging certain acts of misconducts against them.

That though the charge sheet was issued to the said workmen, no enquiry was held against them and their services were terminated w.e.f. 14-5-98. That as regards workmen Sanjeev Naik and Rita Fernandes, neither charge sheet was issued to them nor any enquiry was conducted against them and their services were also terminated w.e.f. 14-5-98. The workmen contended that termination of their service is malafide and is by way of unfair labour practice, and that the employer ought to have sought prior permission as the workmen being office bearers were the protected workmen. The workmen therefore contended that termination of their service is illegal and unjustified and hence they are entitled to be reinstated in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb. 6. The employer admitted that the workmen were in their employment. The employer stated that the workmen had committed various acts of misconduct for which their services were terminated. The employer denied that the services of the workmen were harassed because they formed union or because they were the office bearers of the union. The employer denied that the services of the workmen were terminated by way of unfair labour practice and victimization. The employer denied that any enquiry was required to be held prior to terminating the services of the workmen and stated that the employer was entitled to prove the charges of misconduct before this Tribunal. The employer denied that termination of service of the workmen is illegal or unjustified. The employer also denied that workmen Alex Lopes and Rita Fernandes are not "Workman" within the meaning of Sec. 2 (s) of the Industrial Disputes Act, 1947. Thereafter the workmen filed rejoinder at Exb. 7. On the pleadings of the parties, issues were framed at Exb. 8. Since the employer had denied that Mr. Alex Lopes and Ms. Rita Fernandes are workmen under the Industrial Disputes Act, 1947, issue No. 4 was framed as to whether the employer proves that Mr. Alex Lopes is not workman within the meaning of Sec.2(s) of the Industrial Disputes Act, 1947. Issue No. 5 was framed as to whether the workman Ms. Rita Fernandes is not a workman within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947. Thereafter the case was fixed for the evidence of the workman on issue nos. 1, 4 and 5 which were treated as preliminary issues. At the time when the evidence of the workman was partly recorded Adv. Shri Kundaikar representing the workmen and Adv. Shri P. J. Kamat representing the employer submitted that the dispute of the workman Ms. Rita Fernandes was amicably settled with the employer and they filed the terms of the settlement dated 24-10-2002 at Exb. 18. Both the parties prayed that consent award be passed in terms of the said settlement with reference to the workman Ms. Rita Fernandes. I have gone through the terms of the settlement which are duly signed by Ms. Rita Fernandes and the employer along with their Advocates. I am satisfied that the said terms of the settlement are certainly in the interest of the workman Ms. Rita Fernandes. I therefore accept the submissions

made by the parties and pass the consent award in terms of the settlement dated 24-10-2002-Exb.18.

ORDER

1. It is agreed between the parties that the termination of services of Mrs. Rita Fernandes be converted into resignation from the services of M/s. Hotel Goan Heritage, Calangute, Bardez Goa.
2. It is agreed between the parties that the Party II agrees to pay to Mrs. Rita Fernandes an amount of Rs. 2,00,000/- (Rupees Two Lakhs only) in full and final settlement of all her claims against the Party II. The above said amount is over and above what was paid to her earlier.
3. It is agreed between the parties that the amount payable under Clause (2) above shall be paid within 7 days of the filing of this application in the Tribunal for the consent award.
4. It is agreed and declared by Mrs. Rita Fernandes that the amount payable by the Party II Company to her in the manner hereinabove provided for all in full and final satisfaction of all her claims against the company including the claims for compensation for loss of office or otherwise howsoever.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 20-12-2002 in reference No. IT/31/2002, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 7th January, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/31/2002

Workmen,
Goa Trade & Commercial Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa. Workmen/Party I

v/s

M/s. Thappa Enterprises,
C/o Babush Pereira,
Chawal, R. No. 2,
Mangor Hill,
Vasco-da-Gama, Goa. Employer/Party II

Workmen/Party I- Represented by Adv. Shri Suhas Naik.

Employer/Party II- Represented by its Proprietor Shri T. Thappa.

Panaji, dated: 20-12-2002

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 29-4-2002, bearing No. 28/22/2002-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Thappa Enterprises, Contractor to M/s. Salamander Distillers Ltd., in terminating the services of (a) Shri Channa Bassappa (b) Ms. Sudha D. Naik, with effect from 26-6-2001, is legal and justified ?

If not, to what relief the workpersons are entitled?"

2. On receipt of the reference a case was registered under No. IT/31/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen-Party I (for short, "Union") was represented by its Secretary Shri Subhas Naik and the Employer-Party II (for short, "Employer") was represented by its Proprietor Shri T. Thappa. The Union did not file any statement of claim but submitted that the employer as well as the union are trying to arrive at a settlement and accordingly at the request of both the parties the case was fixed on 3-10-2002 for filing the terms of settlement. On this date, Adv. Shri Suhas Naik, the Secretary of the Union appeared along with Shri T. Thappa, the Proprietor of the Employer. Both the parties submitted that the dispute was settled amicably and they filed the terms of settlement dated 3-10-2002 at Exb. 3 stating that the workmen involved in the present reference have been taken back in employment by the employer. They stated that in the circumstances the dispute does not survive and prayed that no dispute award be passed in the matter.

3. The Union as well as the Employer in their application filed on 3-10-2002 at Exb. 3 have stated that the workman involved in the present reference have

been taken back in employment by the employer at the place of work where the workmen were earlier employed. Since the workmen have been taken back in service and the parties have settled the dispute amicably, in my view, the dispute does not exist and the reference does not survive and I hold so accordingly.

ORDER

It is hereby held that the dispute does not exist and hence the reference does not survive.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 23/12/2002 in reference No. IT/9/2002, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 14th January, 2003.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No.IT/9/2002

Shri Devanand Divkar,
Gudem, Siolim,
Bardez-Goa.

.... Workman/Party I

v/s

M/s. Pushparti Packs,
Pvt. Ltd., Plot No. 2,
Tivim Industrial Estate,
Karaswada, Mapusa,
Bardez-Goa.

.... Employer/Party II

Workman/Party I - represented by Adv. Shri P. J. Kamat.
Employer/Party II Ex-Parte.

Dated:- 23-12-2002

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 14-2-2002 bearing No. 28/16/2001-LAB referred the following dispute for adjudication of this Tribunal.

1. Whether the action of the management of M/s. Pushparthi Packs Pvt. Ltd., Karaswada, Mapusa, Goa in terminating the services of Shri Devanand Divkar, with effect from 1-4-2000, is legal and justified?

2. If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/9/2002 and registered A. D. notice was issued to the parties. In pursuance to the said notice the Workman/Party-I (for short 'workman') put in his appearance and was represented by Adv. Shri P. J. Kamat. The Employer/Party-II was duly served with the notice but in spite of the said notice did not appear and therefore the case was proceeded ex-parte against the Employer/Party-II (for short 'employer') on 29-7-2002. The workman filed its statement of claim at Exb.-4. The facts of the case in brief as pleaded by the workman are that he was employed with the employer as a packer w. e. f. December, 1994 on daily wages and he was confirmed as a packer w. e. f. 1-5-98 vide letter dated 6-6-98. That as a Packer he was performing the duties assigned to the post and such other jobs as assigned to him by his superiors. That during the tenure of his service he had rendered unblemished service and he was not issued any warning, memos, notice etc. That all of a sudden from 4-9-99 the workman along with 12 other employees were laid off from service without any cause and were paid 50% of the wages as lay off compensation. That from 1st April 2000 the employer terminated his service without any cause and in spite of the assurance given by the Director he was not taken back in service. That thereafter by letter dated 6-3-2001 he raised the dispute before the Asst. Labour Commissioner, Mapusa regarding illegal termination of his services and though the employer received notice from the Asstt. Labour Commissioner, Mapusa, the employer did not participate in the proceedings and the conciliation proceedings ended in failure. The workman contended that the termination of his services amounts to retrenchment under Section 2 (00) of the Industrial Disputes Act, 1947 and since the employer did not comply with the provisions of Section 25-F of the Act before terminating his services, the action of the employer is illegal and bad in law and therefore he is entitled to reinstatement in service with full back wages and continuity in service.

3. As mentioned earlier the present case is proceeded ex-parte against employer as in spite of the opportunity given the employer did not participate in the proceedings. Consequently ex-parte evidence of the workman was recorded. The workman examined only himself in support of his case. In his deposition he has stated that he was employed with the employer from December 94 on daily wages as a Packer and he was confirmed in service by letter dated 6-6-98. He has produced the said letter at Exb. W-1. He has stated that he was covered under the provisions of ESI Act w.e.f. 1-1-97 and he has produced the identity card issued by the Corporation at Exb. W-2 and the medical acceptance card at Exb. W-3 also issued by the Corporation. He has stated that as a Packer he was doing the work of Packing the printing material manufactured by the employer in its factory situated at Karaswada, Mapusa and that he was also doing other miscellaneous work. He has stated that he was laid off along with other workers from 4-9-99 to 31-3-2000 and during the period of lay off he was paid 50% of the wages. He has stated that his services were terminated by the employer from 1-4-2000 along with some other workers. He has stated that during his service tenure he was not issued any memo or warning letter nor any chargesheet. He has produced the letter dated 6-3-2001 at Exb. W-4 raising the dispute before Asst. Labour Commissioner, Mapusa regarding termination of his services. He has stated that the conciliation proceedings ended in failure because the employer did not participate in the said proceedings and he produced the failure report at Exb. W-5. He has produced his wage slip dated 7-12-98 in respect of his wages for the month of November, 98 at Exb. W-6. He has stated that before termination of his services he was not given one month's notice nor was paid one month's wages in lieu of notice nor was paid retrenchment compensation. He stated that termination of his services by the employer is illegal and unjustified and that he is entitled to reinstatement in service with full back wages and continuity in service.

4. The deposition of the workman has gone unchallenged as the case has proceeded ex-parte against the employer. The employer was given opportunity to contest the proceedings but the employer chose to remain absent and allowed the case to proceed ex-parte. I have no reason to disbelieve the statement of the workman which is made on oath. The workman has stated that he was employed from December, 94. The documents produced by the workman namely the confirmation letter dated 6-6-98 Exb. W-1 issued by the employer proves that the workman was employed with the employer as a Packer and he was confirmed in service w.e. f. 1st May, 98. The contention of the workman that his services were terminated w. e. f. 1-4-2000 is supported by the failure report of the Asstt. Labour Commissioner, Mapusa which is produced at Exb. W-5. The failure report mentions that in spite of several appeals the employer did not participate in the proceedings and that the workman had stated that his

services were terminated w.e.f. 1-4-2000. The contention of the workman is that the termination of his services amounts to retrenchment and since he was not given one month's notice nor was paid notice pay nor retrenchment compensation prior to termination of the services, the action of the employer in terminating his services is illegal and unjustified.

5. "Retrenchment" is defined in Section 2 (oo) of the Industrial Disputes Act, 1947. As per the said section retrenchment means termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action. The services of the workman were terminated without giving any reason. The termination was not as a matter of punishment inflicted by way of disciplinary action. The workman's case also does not fall within the exceptions laid down under Section 2 (oo) of the Industrial Disputes Act, 1947 which are (a) voluntary retirement of the workman or (b) retrenchment of the workman at reaching the age of superannuation if the contract of employer between the employer and the workman concerned contains a stipulation in that behalf or (bb) Termination of service of the workman as a result of the non renewal of the contract of employer between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein or (c) termination of service of a workman on the ground of continued ill health. Therefore in my view the termination of services of the workman amounts to retrenchment as defined under section 2 (oo) of the Industrial Disputes Act, 1947.

6. Section 25-F of the Industrial Disputes Act, 1947 lays down the procedure to be followed by the employer for retrenching the services of a workman. As per the said provision the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wages per each completed year of continuous service or any part thereof in excess of six months. The above conditions are condition precedent to retrenchment. Section 25-B (2) of the Industrial Disputes Act, 1947 defines continuous service. As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. In the present case admittedly the workman was not employed below ground in a mine. The workman was employed from December 1994 and he was confirmed in service from 1st May, 1998. There is no challenge to the statement of the workman that he was employed from December, 94 and that his services were terminated from 1-4-2000. It is therefore established that the workman worked with the employer for more than 240 days prior to the

date of termination of his service and therefore the provisions of Section 25-F applied to the workman. The Supreme Court in the case of M/s. Avon Service Production Agency Pvt. Ltd. V/s. Industrial Tribunal Hariyana and others reported in AIR 1970 S. C. 170 has held that giving notice and payment of compensation is a condition precedent for valid retrenchment and failure to comply with the provisions prescribing the conditions precedent for valid retrenchment in Section 25-F renders the order of termination invalid and in-operative. Same principles are laid down by the Supreme Court in the case of Gammon India Ltd. V/s. Niranjan Das reported in (1984) 1 SCC 509. In this case the Supreme Court has held that in the absence of compliance with the requisites of Section 25-F the retrenchment bringing about the termination would be void ab-initio. In the present case there is no evidence that the workman was given one month's notice or that he was paid notice pay and the retrenchment compensation at the time when his services were terminated. Therefore there is no compliance of Section 25-F of the Industrial Disputes Act, 1947 from the employer. In the circumstances I hold that the termination of services of the workman by the employer w. e. f. 1-4-2000 is illegal and unjustified.

7. Now the question is what relief should be granted to the workman. The normal rule is that when the termination of services of a workman is held to be illegal and unjustified he should be reinstated in service with full back wages unless there are reasons which do not warrant reinstatement or full back wages. In the present case from the records it can be gathered that the establishment/factory of the employer is closed. On receipt of the reference, a registered A/D notice was issued to the employer on the address given in the order of reference. This address is the one where the factory of the employer is situated. The said registered A/D notice was returned unserved with postal endorsement "closed". This shows that the factory/establishment is closed. However there is no evidence to show as to from which date the factory is closed. The registered A/D notice was issued to the employer on 8-3-2002 requiring the employer to appear before this Tribunal on 4-4-2002 at 10.30 a.m. The endorsement of the postal authority on the envelope that the factory is found closed is dated 18-3-2002. Therefore in the absence of any other evidence it would be just and proper to hold that the factory/establishment of the employer is closed from March, 2002 and I hold so accordingly. In the circumstances there is no question of granting reinstatement in service to the workman. The workman will be entitled to back wages with all consequential benefits from the date of termination of his service, that is, from 1-4-2000 till the date of closure of the factory/establishment of the employer, that is, till February 2002. It has been held by me that the factory/establishment of the employer is closed from March 2002. In the present case the provisions of Chapter VB of the Industrial

Disputes Act 1947, which deals with closure cannot be applied to the employer because there is no evidence that the employer was employing more than 100 workers. Therefore what is applicable is the provisions of Sec. 25 FFF of the said Act. As per the said section a workman who has been in continuous service of not less than one year before the date of closure is entitled to notice and compensation in accordance with the provisions of Sec. 25 F of the Act as if the workman has been retrenched. In the present case the workman has stated that he was employed from December, 1994. According to the workman his services were terminated from 1-4-2000. Termination of his service has been held by me as illegal and unjustified. Therefore the workman was in continuous service for more than one year before the closure, and hence he is entitled to Compensation as provided under clause 25 F of the Act, 1947. In the circumstances I hold that the workman is entitled to back wages with all consequential benefits from the date of termination of his service that is from 1-4-2000 till February 2002 as also the closure compensation as provided under Sec. 25 F of the Industrial Disputes Act, 1947.

Hence I pass the following order.

ORDER

It is hereby held that the action of the employer M/s. Pushparti Packs Pvt. Ltd. Plot No. 2, Tivim Industrial Estate, Karaswada, Mapusa, Bardez Goa in terminating the services of the workman Shri Devanand Divkar, Gudem, Siolim, Bardez Goa with effect from 1-4-2000 is not legal and justified. M/s. Pushparthi Packs Pvt. Ltd., shall pay to Shri Devanand Divkar back wages with all consequential benefits from 1-4-2000 till February, 2002 and the closure compensation as provided under Sec. 25 F of the Industrial Disputes Act, 1947.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 7/1/2003 in reference No. IT/42/74, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour)

Panaji, 22nd January, 2003.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/42/74

Workmen,
Rep. by All Goa Gen.
Employees Union.

— Workmen/Party I

V/s

M/s Agencia E. Sequeira,
Campal,
Panaji-Goa.

— Employer/Party II

Workman/Party I - Represented by Adv. Shri. T. Pereira.

Opponent/Party II - Represented by Adv. Shri A. Nigalye.

Panaji, dated.: 7-1-2003

AWARD

In exercise of the powers conferred by sub-section (2) of Sec. 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Lieutenant Governor of Goa, Daman and Diu by order dated 19th August, 1974 bearing No. LC/1/ID(160) 73 referred the following dispute for adjudication of this Tribunal.

"Whether the action of the Management, M/s Agencia E. Sequeira, Campal Panaji and its units/establishments at Carambolim, Navelim and Borim in terminating the services of the below mentioned workmen is justified?

If not, to what reliefs are they entitled?"

1. Kashinath C. Nachinolkar.
2. Napoleon Colaco.
3. John Fernandes.
4. Inacio Aguiar.
5. Jose B. Vales.
6. Michael Pearson.
7. Gaspar Furtado.
8. Antonio Martires Fernandes.
9. Gaspar Soares.
10. Dinanath Shirodkar
11. Jose Nicolau Cruz
12. Pedro Cruz
13. Balaji Naik
14. Sodhu Borkar
15. Inacio Barreto
16. Jose Camilo Silva
17. Sudhan Pironkar
18. Vitoba Naik
19. Agnelo Rodrigues
20. Biku Dondu Borkar
21. Tulsidas Parpoti
22. Kalu Gaude
23. Rauji Kolvalkar

24. Peter D'Souza
25. Miguel Furtado
26. John Leo Fernandes
27. Joaquim Godinho
28. Inacio C. Cardozo
29. Joao Cruz

2. On receipt of the reference a case was registered under No. IT/42/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman / Party I (for short, "Union") filed the statement of claim in support of its contention that the termination of the service of the 29 workmen named in the reference is illegal and unjustified. The Union contended that the enquiry conducted against the workmen was not legal and proper and that the findings given by the Inquiry Officer are perverse and not based on evidence on record. The union contended that the termination of service of the workmen by the Employer/Party II (for short, "Employer") is illegal and unjustified and therefore they are entitled to reinstatement in service with full back wages and other consequential benefits. The employer filed written statement denying the contentions made by the union in the statement of claim. The employer denied that the enquiry conducted against the workmen is not legal and proper. The employer also denied that the findings given by the Inquiry Officer are perverse or that they are not based on the evidence on record. The employer stated that the charges of misconduct levelled against the workmen were proved in the enquiry and therefore the employer was justified in terminating the services of the workmen. The employer denied that the workmen are entitled to any relief as claimed by the Union. The Union thereafter filed rejoinder. On the pleadings of the parties preliminary issue Nos. 1 and 2 were framed which were relating to the fairness of the enquiry conducted against the workmen. Though the preliminary issues were framed the record shows that no findings were given on the said preliminary issues. The records also show that no further issues were framed in addition to the preliminary issues. Therefore at the request of the parties further issues were framed on 8-6-2001 in addition to the preliminary issues already framed. In the meantime the union had filed the applications dated 24-8-2000, 27-8-2000 and 30-8-2000 on behalf of the legal heirs of the deceased workmen Shri Dinanath D. Shirodkar, Napoleon Colaco and Biku B. Naik Borkar respectively praying that the said legal heirs be brought on record in place of the said deceased workmen. After hearing the parties this Tribunal by order dated 20-12-2000 allowed the said applications and the legal heirs of the deceased workmen, Shri Dinanath D. Shirodkar, Napoleon Colaco and Biku B. Naik Borkar were ordered to be brought on record. After the issues were framed on 8-6-2001 the case was fixed for recording the evidence of the workmen. However, before the evidence was recorded the parties submitted that the dispute between the parties is likely to be settled and at the request of the parties the case was fixed on 17-12-2002 for filing the terms of the settlement. Accordingly on this date Adv. Shri T. Pereira

appeared on behalf of the Union and Adv. Nigalye appeared on behalf of the employer. They submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 17-12-2002 duly signed by the parties. They also filed an application dated 17-12-2002 praying that consent award be passed in terms of the said settlement. I have gone through the terms of settlement filed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 17-12-2002.

ORDER

1. It is agreed between the parties that all the workmen whose services have been terminated and who are parties to the Ref. No. IT/42/74 are properly relieved from the services with effect from the dates mentioned in the order of Reference.
2. It is agreed between the parties that each of the workman, whose names are mentioned in the annexure "A" to this settlement shall be entitled for the amount as mentioned in the Annexure "A" hereto.
3. It is agreed by and between the parties that the Party II shall pay the aforesaid amount of Rs. 86, 604-75 by way of demand draft drawn in favour of the All Goa General Employees Union. It shall be the responsibility of the said Union to disburse /pay the amount payable to each of the workman / dependent of the workman in terms of the Annexure hereto. The Party II shall not, in any manner whatsoever, be responsible or liable for non-payment or short payment of the amount payable to any of the workman or dependent of the workmen.
4. It is agreed between the parties that in view of clauses (1), (2) and (3) above, the workmen and the Union do not press their demand for reinstatement in service with back wages and other consequential benefits.
5. It is agreed between the parties that the amounts payable under clause (2) shall be paid to the workmen / dependents of the deceased workmen within one month of the filing of the settlement before the Tribunal.
6. It is agreed and declared that the amount payable by the Party II to the workmen/dependents of the workmen in the manner hereinabove provided for are in full and final settlement and satisfaction of all the claims of the workmen against the Party II including claims for compensation for loss of office or otherwise whatsoever.
7. The parties hereby agree that with the signing of the settlement the reference number 42/74 is conclusively settled.

ANNEXURE 'A'

Serial No. as per List	Name	Year of joining service	Completed yr. of service as on 1974 "N"	Last drawn wages "W"	Retrenchment Compensation + Gratuity as on 1974 "N & W"	Notice Pay	Compensation payable as on 1974	Simple interest @ 10% p. a. for 28 years and 6 months.	Total amount payable as on 31-11-2002.
1	Kashinath Nasolkar	1967	8	500/-	4000/-	500/-	4500/-	450x28.5=12825	4500+12825=17325
2	Napoleo Colaco	1968	7	500/-	3500/-	500/-	4000/-	400x28.5=11400	4000+11400=15400
10	Shrinath Shirodkar	1961	8	200/-	1600/-	200/-	1800/-	180x28.5=5130	1800+5130=6930
11	Jose Nicalau Cruz	1966	9	230/-	2070/-	230/-	2300/-	230x28.5=6,555	2300+6555=8855
12	Pedro Cruz	1969	6	160/-	960/-	160/-	1120/-	112x28.5=3192	1120+3192=4312
14	Sadhu Borkar	1966	9	190/-	1710/-	190/-	1900/-	190x28.5=5415	1900+5415=7315
18	Vithoba Naik	1971	4	225/-	900/-	225/-	1125/-	112.5x28.5=3206.25	1125+3206.25=4331.25
20	Bhiku Dhondur Borkar	1967	8	260/-	2080/-	260/-	2340/-	234x28.5=669	2340+669=9009
21	Tulsidas Parpati	1969	6	150/-	900/-	150/-	1050/-	105x28.5=2992.50	1050+2992.50=4042.5
22	Kalu Gawade	1969	6	150/-	900/-	150/-	1050/-	105x28.5=2992.50	1050+2992.50=4042.5
29	Joao Cruz	1969	6	150/-	900/-	150/-	1050/-	105x28.5=2992.50	1050+2992.50=4042.5
									Rs. 86,604.75

Total: Rupees Eighty Six Thousand Six Hundred Four and Paise Seventy Five only.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 2-1-2003 in reference No. IT/43/74, is hereby published as required by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 22nd January, 2003.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/43/74

Workmen rep. by

All Goa General Employees

Union, having its office

at Vasco da Gama..

v/s

M/s. Agencia E. Sequeira,

Campal, Panaji-Goa.

— Workmen/Party I

— Employer/Party II

Workmen/Party - I represented by Adv. Shri T. Pereira.

Employer/Party-II represented by Adv. Shri A. Nigalye.

Dated: 2-1-2003

AWARD

In exercise of the powers conferred by sub-section 2 of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Lt. Governor of Goa, Daman and Diu by order dated 19-8-74 bearing No. LC/1/ID (160)/73 referred the following dispute for adjudication of this Tribunal.

Whether the action of the Management M/s. Agencia E. Sequeira (Borim Establishment), Borim, Ponda in terminating the services of the below mentioned workmen is justified?

If not, to what relief or reliefs they are entitled to?

1. Archibald D' Souza.
2. Thomas Noronha.
3. Carlos Travasso.
4. Anthony Pereira.
5. Victor Mascarenhas.
6. Joaquim Coutinho
7. John Espinheiro.
8. Manuel Crasto.
9. Francis Braganza.
10. Joseph Pereira.
11. Lawrence Fernandes.
12. Budho Moli.

13. Narendra Shett.
14. Pedro Cruz.
15. Gabriel Mascarenhas.
16. Dayanand Naik.
17. Krishna Chari.
18. Jaywant Chari.
19. Mahadev Phatte.
20. Anthony R. Dias.
21. Sayed Rafi.
22. Michael Gomes.
23. Lionel Costa.
24. Narayan Pednekar.
25. Francis Fernandes.
26. Ramdas Naik.
27. Somnath Chari.
28. Joaquim Gomes.
29. Ramesh Krishna Chari.
30. Devidas Kanekar.
31. Pandurang Chari.
32. Babuso Chari.

2. On receipt of the reference a case was registered under No. IT/43/74 and registered A. D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short 'Union') filed its statement of claim in support of its contention that the termination of services of the 32 workmen named in the reference is illegal and unjustified. The union contended that the enquiry conducted against the workmen by the Employer/Party-II (for short 'employer') is not fair and proper and that they were not given proper opportunity to defend themselves in the enquiry. The union also contended that the charges of misconduct levelled against the workmen were not proved in the enquiry. The union contended that since the termination of services of the workmen is illegal and unjustified the workmen are entitled to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed written statement denying the contentions raised by the union in the claim statement. The employer stated that the enquiry conducted against the workmen is fair and proper and the workmen were given reasonable opportunity to defend themselves in the enquiry. The employer stated that misconduct was proved against the workmen in the enquiry conducted against them. The employer denied that termination of services of the workmen is illegal or unjustified. The employer stated that the workmen are not entitled to any relief as claimed by the union.

4. On the pleadings of the parties issue No. 1 and 2 were framed which was relating to the fairness of the enquiry and the said issues were treated as preliminary issues. After the parties had led evidence on the preliminary issues this Tribunal by findings dated 9-8-87 held that enquiry conducted against the workmen was legal, fair and proper. The said findings were challenged by the union by filing Writ Petition No. 434/1991 in the High Court of Judicature at Bombay, Panaji Bench (Goa). The Hon'ble Bombay High Court by order dated 22-4-1997 dismissed the Writ Petition and also vacated the stay of the proceedings granted on 6-12-91. Thereafter the union filed an application dated 13-1-2000 praying that the above case be taken up for hearing since the Hon'ble High Court had dismissed the Writ Petition. Accordingly the above case was taken up for hearing and notice was issued

to the employer. Subsequently an application dated 27-8-2000 was filed by the legal heirs of the deceased workman No. 12, Shri Budo Moli praying that they be brought on record in his place as upon his death on 1-12-92 he has left them behind as his legal heirs. Upon hearing the parties, this Tribunal passed an order dated 20-11-2000 allowing the application dated 27-8-2000 filed by the legal heirs of the deceased workmen Shri Budo Moli and his legal heirs were ordered to be brought on record. Thereafter it was found that except for the preliminary issues relating to the fairness of the enquiry no other issues were framed and therefore on 8-6-2001 at the request of the parties further issues were framed in addition to the preliminary issues already framed and the case was fixed for filing of the list of documents and witnesses by the parties. It was pointed out by the parties that since the issues Nos. 1 and 2 which were relating to the fairness of the enquiry were disposed off, this Tribunal was required to decide the issue No. 3 which was relating to the proving of the charges of the misconduct in the enquiry. Accordingly at the request of the parties the case was fixed for arguments on issue No. 3. However before the arguments could be heard, the parties submitted that they were trying to arrive an amicable settlement and at the request of the parties the case was fixed on 17-12-2002 for filing the terms of settlement. Accordingly on this date Adv. Shri Pereira appeared on behalf of the union and Adv. Shri Nigalye appeared on behalf of the employer. They submitted that the dispute between the parties was amicably settled and they filed the terms of the settlement dated 17-12-2002 duly signed by the parties. They also filed an application dated 17-12-2002 praying that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement filed by the parties and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-12-2002.

ORDER

1. It is agreed between the parties that all the workmen whose services have been terminated and who are parties to the Ref. No. IT/43/74 are properly relieved from the services with effect from the dates mentioned in the order of Reference.
2. It is agreed between the parties that each of the workman, whose names are mentioned in the Annexure A to this settlement shall be entitled for the amounts as mentioned in the Annexure A hereto.
3. It is agreed by and between the parties that the Party II shall pay the aforesaid amount of Rs. 1, 41, 391.25 by way of demand draft drawn in favour of the All Goa General Employees Union. It shall be the responsibility of the said Union to disburse/pay the amount payable to each of the workman/dependent of the workmen in terms of the Annexure hereto. The Party II shall not, in any manner whatsoever, be responsible or liable for non-payment or short payment of the amount payable to any of the workman or dependent of the workmen.
4. It is agreed between the parties that in view of clauses (1), (2) and (3) above, the workmen and the Union do not press their demand for reinstatement in service with back wages and other consequential benefits.

5. It is agreed between the parties that the amounts payable under clause (2) shall be paid to the workmen/dependents of the deceased workmen within one month of the filing of the Settlement before the Tribunal.
6. It is agreed and declared that the amounts payable by the Party II to the workmen/dependants of the workmen in the manner hereinabove provided for are in full and final settlement and satisfaction of all the claims of the workmen against the Party II including claims for compensation for loss of office or otherwise whatsoever.
7. The parties hereby agree that with the signing of this settlement, the Reference Number 43/74 is conclusively settled.

ANNEXURE "A"

Sr. No. as per list.	Name	Year of joining service	Completed year of service as in 1974 N	Last drawn wages W	Retrenchment compensation/gratuity as on 1974 (NxW)	Notice Pay	Compensation payable as on 1974	Simple Interest @ 10% p.a. for 28 yrs. 6 months.	Total amount payable as on 30-11-2002
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
3.	Carlos Travasso	1970	5	400/-	2000/-	400/-	2400/-	240x28.5=6840	2400+6840=9240
9.	Francisco Braganza	1965	10	380/-	3800/-	380/-	4180/-	418x28.5=11913	4180+11913=16093
12.	Bhudho Moli	1967	8	200/-	1600/-	200/-	1800/-	180x28.5=5130	1800+5130=6930
13.	Narendra Seth	1968	7	200/-	1400/-	200/-	1600/-	160x28.5=4560	1600+4560=6160
1.	Mahadeo Phadte	1972	3	160/-	480/-	160/-	640/-	64x28.5=1824	640+1824=2464
20.	Anthony R. Dias	1964	11	280/-	3080/-	280/-	3360/-	336x28.5=9576	3360+9576=12936
26.	Ramdas Naik	1969	6	175/-	1050/-	175/-	1225/-	122.5x28.5=3491.25	1225+3491.25=4716.25
29.	Ramesh Krishna Chari	1972	3	270/-	810/-	270/-	1080/-	108x28.5=3078	1080+3078=4158
11.	Lawrence Fernandes	1964	11	260/-	2860/-	260/-	3120/-	312x28.5=8892	3120+8892=12012
21.	Sayyed Rafi	1966	9	400/-	3600/-	400/-	4000/-	400x28.5=11400	4000+11400=15400
17.	Krishna Chari	1964	11	350/-	3850/-	350/-	4200/-	420x28.5=11970	4200+11970=16170
6.	Joaquim Antonio Coutinho	1970	5	200/-	1000/-	200/-	1200/-	120x28.5=3420	1200+3420=4620
31.	Pandurang Chari	1967	8	240/-	1920/-	240/-	2160/-	216x28.5=6156	2160+6156=8316
4.	Anton Pereira	1968	7	175/-	1225/-	175/-	1400/-	140x28.5=3990	1400+3990=5390
16.	Dayanand Sonu Naik	1969	6	160/-	960/-	160/-	1120/-	112x28.5=3192	1120+3192=4312
22.	Michael Gomes	1972	3	270/-	810/-	270/-	1080/-	108x28.5=3078	1080+3078=4158
15.	Gabriel Mascarenhas	1972	3	150/-	450/-	150/-	600/-	60x28.5=1710	600+1710=2310
24.	Narayan Pednekar	1970	5	260/-	1300/-	260/-	1560/-	156x28.5=4446	1560+4446=6006
									1,41,391.25

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.GOVERNMENT PRINTING PRESS,
PANAJI — GOA.

PRICE — Rs. 5.00